

ARKANSAS SUPREME COURT

No. CR 07-727

WILLIE E. MORRIS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 9, 2008

PRO SE APPEAL FROM THE CIRCUIT
COURT OF PULASKI COUNTY, CR
2004-1730, HON. MARION A.
HUMPHREY, JUDGE

AFFIRMED.

PER CURIAM

In 2005, appellant Willie E. Morris was found guilty by a jury of rape and kidnapping and sentenced to an aggregate term of 720 months' imprisonment. The Arkansas Court of Appeals affirmed. *Morris v. State*, CACR 06-226 (Ark. App. Dec. 20, 2006). Subsequently, appellant filed in the trial court a petition to vacate or set aside the judgment. The trial court denied the petition without a hearing, and appellant has lodged a pro se appeal here from the order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

In the petition filed below, appellant sought DNA and other scientific testing pursuant to Act 1780 of 2001¹ based on actual innocence, ineffective assistance of counsel and prosecutorial

¹Act 1780 of 2001 was amended by Act 2250 of 2005 and codified as Arkansas Code

misconduct. Although he invoked Act 1780, appellant cited the statutes governing a petition for writ of habeas corpus, based upon either a lack of jurisdiction or a facially invalid judgment, pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006). The trial court denied both forms of habeas relief, as well as appellant's claims of ineffective assistance of counsel and prosecutorial misconduct. On appeal, appellant argues that the trial court erred in denying the petition for DNA testing and by failing to conduct a hearing on the petition. We find no error and affirm.

Appellant first complains on appeal that the trial court erroneously denied the petition for scientific testing. As noted, Act 1780 involves scientific testing of evidence introduced at trial proving a person actually innocent of the offense or offenses for which he or she was convicted. *See* Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006) and sections 16-112-201 to -208; *see also Echols v. State*, 350 Ark. 42, 84 S.W.3d 424 (2002) (per curiam) (decision under prior law). A number of predicate requirements must be met under Act 1780 before a circuit court can order that testing be done under the act. *See* sections 16-112-201 to -203.

Here, evidence adduced at trial was that appellant approached the victim, who was fourteen years old at the time, as she was walking home from her bus stop after school. He showed her a gun tucked into his waistband and coerced her to walk around her neighborhood with him. After he directed her to point out her house, he pulled her into a secluded area of her backyard. There, he forced her to perform oral sex on him and then vaginally raped her. He released her and she ran into her house. The victim summoned her father to come home immediately, and her parents reported the crime to the police as soon as they both arrived at the house.

After being interviewed by the police, the victim was taken to the hospital where a rape kit

Annotated §§16-112-201 to -208 (Repl. 2006).

and pelvic examination were performed. The rape kit items, including the victim's clothing, were gathered to be forensically tested by the Arkansas State Crime Laboratory ("crime lab"). In addition, hair, cheek, and blood samples were taken from appellant to compare to any evidence obtained from the rape kit examination and other evidence obtained by the police.

The crime lab's tests indicated that no blood or semen was found on the victim or her clothing. In addition, no hair from the rape kit evidence matched appellant's hair. At trial, the defense argued that the victim misidentified appellant in a photo line-up and there was no forensic evidence that connected him to the crime.

The crux of appellant's petition for DNA testing concerns the presence of a single unidentified dark hair fragment retrieved from the rape kit evidence.² The crime lab microscopically compared the hair to appellant's samples and could not conclude that the hair belonged to appellant. No DNA testing could be done on the hair as it was too short to conduct such a test. Also, the hair came from the middle of the hair shaft and did not contain the hair root and attached tissue necessary to obtain genetic material for DNA testing.

On appeal, appellant insists that comparing the hair sample to the victim's hair was necessary to rule out that the hair belonged to her. He also contends that the prosecutor hid the existence of the hair fragment which constituted misconduct. Finally, he alleges that trial counsel was ineffective as the hair fragment was not subjected to DNA testing which would prove his actual innocence.

Pursuant to section 16-112-201(a)(1), requested scientific testing is limited to tests that were

²In the petition filed in the trial court, appellant additionally sought DNA testing of the victim's panties, sanitary napkin, and vaginal swabs. He further stated that blood grouping tests, sperm detection and isolation of DNA had recently been improved, but provided no factual basis for his claims. On appeal, appellant abandoned his request for these tests as his brief to this court contained no reference to these items of evidence or requested tests. Claims raised below but not argued on appeal are considered abandoned. *State v. Grisby*, 370 Ark. 66, 257 S.W.3d 104 (2007).

not available at the time of appellant's trial. The trial court held that appellant failed to demonstrate entitlement to DNA testing as such testing was available at the time of his trial. Appellant has likewise failed here to establish that the testing he now seeks was not available at the time of trial.

In addition, Chantelle Taylor, an employee with the crime lab's trace evidence section, testified at trial that the hair fragment could not be tested for DNA due to its length and lack of tissue containing genetic material. This testimony negates both of appellant's contentions that counsel was ineffective for failing to seek DNA testing of the hair fragment and that the prosecutor engaged in misconduct by hiding the existence of the hair fragment.

Moreover, appellant's request for DNA testing would fail to establish that he was innocent of the charges filed against him as required by sections 16-112-202(6) and (8). Appellant's defense at trial was in part that no physical evidence connected him to the rape, and this defense was established by the testimony of Ms. Taylor. Testing the hair fragment to exclude it from belonging to the victim would do nothing to further his defense or prove his innocence, assuming that DNA could be extracted from it.

Even were such testing possible, the result could do no more than show that the hair belonged to someone other than appellant or the victim. The existence of a hair belonging to a third person cannot prove that appellant was not present at the scene of the rape. At most, such a result would show only that another person came into contact with the victim, which does not in itself prove that appellant was innocent of raping the victim. Appellant failed to demonstrate that the trial court erred in its findings on these points.

In his second point on appeal, appellant claims that the trial court erred by failing to conduct an evidentiary hearing on his petition and by failing to "find conclusions of law supporting the

denial.” A circuit court need not hold a hearing if the habeas petition, files, and records show that a petitioner is not entitled to relief. Ark. Code Ann. § 16-112-205(a); *see also Graham v. State*, 358 Ark. 296, 188 S.W.3d 893 (2004) (per curiam) (decision under prior law). As appellant failed to establish several predicate requirements under Act 1780, most importantly that testing would establish that he was innocent of raping the victim, the trial court did not err when it did not hold an evidentiary hearing. We find no error and affirm the trial court on this point.

Affirmed.